

File - Dual Comp.

COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

B-101555

March 7, 1951

Fleet Admiral Chester W. Nimitz, Chairman
President's Commission on Internal Security
and Individual Rights

Dear Admiral Nimitz:

Pursuant to your request, there has been referred to this Office for decision the question whether you legally may accept the compensation as Chairman of the President's Commission on Internal Security and Individual Rights in addition to the pay and allowances you now receive as Fleet Admiral of the Navy.

The said Commission was established by Executive Order No. 10207 dated January 23, 1951, for the specific purpose of studying problems of providing for the internal security of this country and at the same time protecting the rights and freedom of individuals. It is charged with the duty of making a report to the President of its findings and conclusions. And, under the terms of the said Executive order, unless otherwise directed by the President, it shall cease to exist 30 days after presentation of its final report. The President designated you as Chairman of the Commission and by letter dated January 30, 1951, fixed the compensation of the Chairman and each member of the Commission at the rate of \$75 per day "for each day that he is engaged in the business of the Commission or is traveling in connection with such business." Traveling expenses also were authorized in accordance with the provisions of section 5 of the act of August 2, 1946, 5 U.S.C. (73b-2).

With respect to your status as a Fleet Admiral, it is understood from the information available in this Office that you are on the active list of the Navy in that capacity and receive the active-duty pay and allowances attached thereto.

Aside from the rule long recognized by this Office that active duty in the armed forces is incompatible with a civilian employment status (18 Comp. Gen. 213, 27 *id.* 510), there are two statutes which operate to restrict civilian employment by the Government of naval officers receiving active-duty pay.

The act of July 31, 1894, 5 U.S.C. 62, provides that:

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"No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law * * *."

In the instant case, it appears that since the functions of the Commission in question are restricted to the accomplishment of a specific objective, it necessarily is of a temporary duration, and the Chairman and members thereof would not be regarded as holding an office within the meaning of that term as used in the above-quoted act. 13 Comp. Gen. 448; 14 id. 68. But, since the compensation payable to the members of the Commission, as well as the active-duty pay of a Fleet Admiral, is "salary" within the legal definition of that term, the receipt of both compensations concurrently would be in contravention of the act of May 10, 1916, as amended, 5 U.S.C. 58, 59 (18 Comp. Gen. 526), which provides (quoting from the U. S. Code):

"§ 58. Double salaries.

"Unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum.

"§ 59. Same; exceptions; retired officers and enlisted men of Army, Navy, Marine Corps, or Coast Guard, or officers and enlisted men of militia.

"Section 58 of this title shall not apply to retired officers or enlisted men of the Army, Navy, Marine Corps, or Coast Guard, or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia."

Although application of the foregoing provisions is predicated upon the basis that you are on the active list of the Navy as a Fleet Admiral, this Office is aware of the circumstances connected with your status in that respect and recognizes that there are some grounds for the view that you might come within the spirit of the above-quoted exception thereto, i.e., by considering your status as being in the nature of a retired Navy officer, but receiving the pay and allowances of one in the active naval service. However, it should be pointed out that even if such view be adopted the facts of your

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case would, nevertheless, fall squarely within the provisions of section 212 of the act of June 30, 1932, 5 U.S.C. 59a, which are in pertinent part as follows:

"(a) After June 30, 1932, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in Title 37, at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than \$3,000; and when the retired pay amounts to or exceeds the rate of \$3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. * * *"

Thus, in either event the result would be substantially the same in that you would be precluded from receiving both emoluments concurrently. Your original letter of February 18 to Mr. Harold E. Benson and also the letter of February 15 to him from the Department of the Navy are returned herewith as requested.

Sincerely yours,

(Signed) FRANK L. YATES

Acting Comptroller General
of the United States